

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

ANGELA MONEYMAKER,

Plaintiff,

v.

HOWMEDICA OSTEONICS CORP.,

Defendant.

Civil Action No. 3:15-cv-00029-JAG

*Denied*  
4/20/15 1st J.A.G.  
John A. Gibney, Jr.  
United States District Judge

**HOWMEDICA OSTEONICS CORP.'S UNOPPOSED MOTION  
FOR LEAVE TO EXCEED PAGE LIMIT FOR ITS  
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Defendant Howmedica Osteonics Corp. ("HOC"), by and through undersigned counsel and pursuant to Local Rule 7(F)(3), respectfully moves for leave to exceed the thirty (30) page limitation on its forthcoming Memorandum in Support of Motion to Dismiss Plaintiffs' First Amended Complaint. In support hereof, HOC states as follows:

1. This action was originally filed by Plaintiffs and several other plaintiffs in the Southern District of Illinois on April 11, 2014. [ECF No. 2].
2. On January 13, 2015, the Southern District of Illinois granted HOC's Motion to Sever Plaintiffs and Transfer Venue [ECF No. 13] and transferred Plaintiffs' action to this Court. [ECF Nos. 30 and 31].
3. The original Complaint [ECF No. 2], filed on behalf of Plaintiffs and their former co-plaintiffs, was 47 pages in length and contained 171 paragraphs and 12 separate counts.
4. On March 13, the Court entered an Order directing Plaintiffs to file an amended complaint on or before April 1, 2015. [ECF No. 39].
5. On April 1, 2015, Plaintiffs filed their First Amended Complaint [ECF No. 44].

6. Plaintiffs' First Amended Complaint is 47 pages long and contains 273 paragraphs and 13 separate counts, as well as a claim for punitive damages.

7. The deadline for HOC to respond to Plaintiffs' First Amended Complaint is April 22, 2014. [ECF No. 39].

8. For "good cause" show, the Court may permit a party to exceed the page limits otherwise set by local rule. *See* E.D. Va. Local Rule 7(F)(3). Good cause for an enlargement of the limitations set by the local rules cannot be made by "ritualistic recitations" that a case is "complex" or bald assertions that it presents "multiple issues." *Cf. Lykins v. Attorney General*, 86 F.R.D. 381, 318-19 (E.D. Va. 1980) (enforcing local rule limitation on number of interrogatories). Rather, a specific showing of good cause is required.

9. Good cause exists to grant such leave. HOC's counsel is making every effort to bring HOC's Memorandum in Support of Motion to Dismiss within the thirty (30) page limitation set forth in Local Rule 7(F)(3). Plaintiff's First Amended Complaint, however, asserts numerous novel causes of action involving alleged contractual and tort liability for injury during a therapeutic clinical trial of a prototype spinal implant. Given the length of Plaintiffs' First Amended Complaint and the number of counts raised therein, the need to sufficiently address each count in turn, the complexity of HOC's arguments in favor of dismissal, which include, among other grounds, federal preemption, HOC cannot fully explain the factual and legal bases in favor of dismissal within the thirty (30) page limit.

10. Accordingly, HOC seeks leave to file a Memorandum in Support of Motion to Dismiss Plaintiffs' First Amended Complaint of that will not exceed 45 pages in length.

11. The requested relief is reasonable and not only will permit HOC's counsel to fully present and advocate its client's position but will enable this Court to assess the merits of HOC's

arguments with the benefit of a fully briefed Motion to Dismiss. Moreover, this request is made in good faith and not for the purpose of delay.

12. Prior to filing this Motion, counsel for HOC has conferred with counsel for Plaintiffs, who do not object to HOC's motion.

Dated: April 17, 2015

Respectfully submitted,

STITES & HARBISON, PLLC

/s/ Michael K. Kim

Robert E. Scully, Jr. (VSB # 19218)

Michael K. Kim (VSB # 82922)

STITES & HARBISON, PLLC

1199 North Fairfax Street, Suite 900

Alexandria, Virginia 22314

(703) 739-4900 Telephone

(703) 739-9577 Facsimile

rscully@stites.com

mkim@stites.com

Of counsel:

Kim M. Catullo (admitted *pro hac vice*)

Paul E. Asfendis (admitted *pro hac vice*)

GIBBONS, P.C.

One Pennsylvania Plaza

37th Floor

New York, New York 10119

(212) 613-2000 Telephone

(212) 290-2018 Facsimile

kcatullo@gibbonslaw.com

pasfendis@gibbonslaw.com

*Counsel for Defendant Howmedica Osteonics Corp.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of April, 2015, a true and correct copy of the foregoing pleading or paper was served using the Court's CM/ECF system, with electronic notification of such filing to the following counsel of record:

Stephen W. Bricker, Esq., VSB# 14564  
bricker@brickeranderson.com  
Christopher L. Anderson, Esq., VSB #35173  
anderson@brickeranderson.com  
BrickerAnderson, PC  
411 East Franklin Street, Suite 504  
Richmond, VA 23219  
(804) 649-2304 Telephone  
(804) 649-3380 Facsimile

*Counsel for Plaintiff*

James G. O'Brien, Esq. (0088460)  
jim@zkblaw.com  
Zoll, Kranz & Borgess, LLC  
6620 West Central Avenue, Suite 100  
Toledo, Ohio 43617  
(419) 841-9623 Telephone  
(419) 841-9719 Facsimile

*Counsel for Plaintiff*

/s/ Michael K. Kim

Michael K. Kim (VSB # 82922)